



# BENTLEY UNIVERSITY

## ***Appendix B: Investigation and Adjudication Procedures and Protocols for Incidents Involving Students***

### I. INTRODUCTION:

Bentley University will always respond to reports, reports, allegations, and information about sex- and gender-based discrimination that it knows or should know about. These responses will serve to stop prohibited conduct, prevent its recurrence, and address any lingering impact that it had on both individuals and the larger campus community.

Congress passed the Higher Education Amendments in 1972, and included within them was Title IX, which states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” Since 1972, several other federal and Massachusetts state laws have been adopted to offer further protection to those in higher education (i.e., students, staff, faculty, and third parties) from discrimination and harassment based on a person’s sex or gender. Bentley University is firmly committed to establishing an environment free of such discrimination and prohibits such acts, including: sexual harassment, sexual exploitation, sexual harassment including sexual violence (i.e., sexual assault and non-consensual sexual touching, forcible or not), relationship abuse (including domestic violence and dating violence), voyeurism, and stalking.

Additionally, retaliation against anyone who reports an incident of harassment or discrimination listed above, brings forward a report, or participates in an investigation of harassment or discrimination is also prohibited. Retaliation is also prohibited against those who, in good faith and reasonable manner, oppose an act or policy believed to constitute sex- or gender-based discrimination. It is the responsibility of Bentley University’s Title IX Coordinator to ensure that inquiries into reports of misconduct described above are made, as well as formal investigations consistent with applicable grievance procedures that are described in the following policy.

Bentley also reaffirms the rights of reporting parties to decide whether they wish to be involved in any of the University’s processes to address sex- and gender-based harassment or discrimination. Bentley is strongly committed to supporting reporting parties through the numerous support services available. The University encourages those who wish to receive confidential support services regarding sex- and gender-based discrimination to seek assistance from staff in the Counseling Center, the Health Center, the Boston Area Rape Crisis Center, REACH Beyond Domestic Violence, and/or seek medical attention.

Responsible employees of the University are required by law to report allegations of sexual harassment and other forms of sex- and gender-based discrimination that they observe or learn about to the Title IX Coordinator. The University has identified its “responsible employees” to include Deans and Directors in the Division of Student Affairs, all staff members in the Office of the Dean of Student Affairs, University Police, and all Residential Center Staff (including Resident Assistants). Employees whose positions legally require confidentiality (i.e., licensed mental health counselors and health professionals) are not

responsible employees. If you have a question regarding reporting responsibilities, please contact the Title IX Coordinator.

All employees of Bentley University are strongly encouraged to offer information on how to report such incidents to students and colleagues, as well as report this conduct directly to the Title IX coordinator. Responsible employees who fail to report allegations of sexual harassment and other forms sexual misconduct that they observe or learn about may be subject to disciplinary action. Bentley University is mandated to respond promptly and appropriately to any allegations of sexual harassment or other forms of gender-based discrimination. Under these policies, the university will consider the effects of off-campus conduct for faculty, staff, students, visitors, and community members when evaluating whether a hostile environment was created on campus. Any person responsible for, or involved in, retaliation will be subject to disciplinary action up to and including expulsion or termination.

Additionally, Bentley seeks to ensure that our campus and culture are inclusive for all students, and as such has committed to engaging in several preventative and proactive educational programs and initiatives.

## II. PRELIMINARY ISSUES/DEFINITIONS

A. Jurisdiction: Any person may file a report of sexual misconduct through this process against a Bentley student who is currently enrolled in the University, regardless of where the alleged Sexual Misconduct occurred. The person filing the report is the **Reporting party**. The person against whom the report is filed is the **Responding party**.

The Reporting party need not be a Bentley student, although the majority of disciplinary charges brought against Bentley students are brought by other students. If the person bringing the report is not a current Bentley student and/or the alleged conduct did not occur on campus, at a University affiliated location, or at a University sponsored event, the matter will be referred to the Title IX Coordinator (Erin Kelley, 781-891-2329) for a determination regarding whether the University can exercise jurisdiction over the matter. Although there is no geographical limitation to invoking this process, it should be noted that the greater the distance away from campus that the misconduct is alleged to have occurred, the more difficult it may be for the University to investigate and address the conduct. In cases where Bentley has exercised jurisdiction, the University will investigate the incident of sex/gender-based harassment or discrimination to the best of its ability regardless of location.

B. Administrative Investigation/Disciplinary Action: The University may independently initiate a disciplinary investigation/action against a person under this adjudication process, called a "Dean's Report." In this type of Administrative Investigation or Action, the University will act as the reporting party in the adjudication of a sexual misconduct report against a person. Such reports will proceed under the processes outlined herein and may result in disciplinary action as if the reporting party were a student.

C. Timing of Reports: There is no time limit for the submission of a report alleging Sexual Misconduct. A report received after the semester has ended or during a University break may result in a delay in the adjudication of the report until the beginning of the subsequent semester in which the Responding party is enrolled. Please note that the University's ability to provide effective sanctions for violations of this policy is limited once the Responding party is no longer enrolled at Bentley.

The University reserves the right to initiate adjudication of a report immediately when necessary to protect the interests and safety of the Bentley University community, even when the incident takes place after the end of the semester.

D. Intentional Presentation of False Information: Participants in the Title IX and Gender-Based Discrimination Adjudication Process must present, in good faith, truthful and accurate information to those involved in ensuring a fair process (including Title IX and Deputy Title IX coordinators, Independent Investigators, and the Title IX Panel). Knowingly making false statements or presenting inaccurate information is unacceptable and will result in a separate disciplinary action regarding that conduct. Please note that filing a report or providing information which a party or witness genuinely believes is accurate, but which is ultimately dismissed due to insufficient evidence or found to be untrue, does NOT constitute the intentional presentation of false information.

E. Reporting Conduct/Leniency: Students may be concerned about reporting sexual misconduct believing that their own behavior might subject them to disciplinary action (e.g., a reporting party or witness is underage and was using alcohol or drugs at the time of the incident). Witnesses and reporting parties should be assured that the focus in matters of sexual misconduct is always on the reported behavior, not on whether someone was, for example, using alcohol or drugs at the time. Individuals are encouraged to come forward and report such conduct regardless of the surrounding circumstances.

In situations involving allegations of sexual misconduct, Bentley University will seek to make the sexual misconduct allegation the primary focus of any investigation or disciplinary action. In such circumstances, the University will exercise leniency regarding secondary conduct violations (e.g. underage drinking) and those issues will not be subjected to adjudication. It should be noted that the use of alcohol or drugs does not excuse sexual misconduct and a person who has been incapacitated through the use of alcohol and drugs (or by any other means) cannot give effective consent to sexual activity.

F. Right to Investigate and Decide Related Matters: The Independent Investigation and the Title IX Panel's Decision will not be restricted to the violations alleged in the formal report. The Panel reserves the authority to pursue any additional potential violations of University Policy that have been identified through the Title IX and Gender-Based Discrimination Adjudication Process Investigation. The Title IX Coordinator will notify the parties of the new allegations, and will decide whether such allegations will be investigated by the Independent Investigator or will be considered in another student conduct process. In any case, the adjudication of any other violations of Policy outside of the realm of sexual misconduct will not delay the prompt resolution of the pending Title IX report.

G. No Contact Between Participants: When the Title IX coordinator receives a formal report, a University No Contact Order (sometimes also known as a stay-away order) may be issued barring any communication between the Reporting party and the Responding party. This Order prohibits any attempt to contact or respond to any communication from the other party, either directly or through others (e.g. friends, family members, attorneys, others). The Title IX staff will work with students involved in the Title IX and Gender-Based Discrimination Adjudication Process to help facilitate the No Contact Order between the parties, so that they may attend classes and use University facilities as appropriate. A No Contact Order may be extended after the conclusion of the adjudication process at the request of either party. In cases where a demonstrated violation of this Order has been shown, the responsible student may be separated from the University pending the final resolution of the

adjudication process. Bentley Police are able to provide information and assistance to students who wish to seek a protective order from the courts.

H. Interim Support Measures: The University will not automatically restrict a student from attending classes or participating in other University activities on the basis of a formal report. However, the University does reserve the right to impose interim measures at any time upon learning of an allegation of sexual misconduct, if the University has concerns about the safety of the Bentley community. Such measures may include, but are not limited to, restrictions regarding movement on campus, removal from University housing and/or removal from campus. The decision to impose interim support measures is made at the discretion of the Title IX Coordinator. The University will also enforce any orders that are issued by the Courts of the Commonwealth of Massachusetts.

I. Retaliation: Retaliation against anyone who brings forward a report of sexual misconduct, or who participates in this adjudication process in any manner, is strictly prohibited. Retaliation is also prohibited against anyone who opposes, in a reasonable manner, an act or policy believed to constitute a violation of the Title IX and Gender-Based Discrimination Policy. Retaliation may include, but is not limited to, hostility, intimidation, threats, disseminating information about a report or ongoing investigation, and excluding or discriminating against an individual because of the individual's report or participation in this process. Anyone responsible for retaliation or threats of retaliation, whether against the reporting party or another person, will be subject to disciplinary action by the University. A party may also be responsible for retaliation by someone affiliated with them (i.e., a friend or family member). Retaliation should be reported promptly to the Title IX Coordinator (Erin Kelley, 781-891-2329). Retaliation by a person not affiliated with the University may be addressed by the police.

J. Witnesses: The Reporting and Responding Parties have the right to identify any individuals who may be witnesses to the conduct alleged in a formal report. The parties should be aware that it is possible for both the Reporting and Responding Parties to list the same people to speak as witnesses on their behalf. Witnesses should only be encouraged to cooperate and to speak the truth. Witnesses should not be intimidated, threatened, or improperly influenced in any way by either party or through others (e.g. friends, family members, attorneys, others). Any attempt to threaten, intimidate or the otherwise improperly influence the testimony of a witness will result in a separate disciplinary action by the University. The Investigator will attempt to interview any witnesses identified by the parties that the investigator deems to be relevant to the resolution of the formal report.

K. Support Person: Involved parties in the Title IX and Gender-Based Discrimination Adjudication Process as Reporting or Responding Parties may be more comfortable navigating the process with the help of a support person. A support person is someone whom the party trusts to provide advice and support during the process. A support person can be any person the party feels comfortable confiding in, and need not be affiliated with the University (i.e. a friend, a family member, a person from a support or advocacy agency). A support person may accompany the party to any part of the adjudication process, including any meetings with the Title IX Coordinator (or Deputy Coordinator), the Title IX Panel Conference, and Investigator. The support person does not participate in the process and, as such, cannot be a witness to the allegations in the report. A support person must agree to maintain the confidentiality of the process.

L. Confidentiality: Any information or written material related to a formal report will be treated as confidential. Disclosure of such information by parties or witnesses to anyone other than the Title IX (or

Deputy) Coordinator, the Panel, the Investigator, legal counsel, support persons, clergy, and/or confidential counselors is strictly prohibited and may subject the person responsible for the disclosure to disciplinary action. Although discretion will remain important, the parties are not restricted from discussing and sharing information relating to their report with others that may support them or assist them in preparing their report. The Investigator, the Panel, legal counsel, support persons, clergy, confidential counselors and any other authorized person with whom a student has shared case materials are prohibited from disclosing that information to others without the express written permission of the Title IX Coordinator.

Participants should be aware that the University maintains the discretion to share confidential information internally, if necessary, to comply with its obligations regarding campus safety and Title IX. If a student participant in this process is also enrolled in another institution, the University may be required to disclose information regarding the pending report to that organization. In either situation, such disclosures will be made in the most limited manner possible and the recipients will be advised that the information must be maintained in a confidential manner.

The University will maintain confidentiality during and after the investigation, with the exception of generic reporting of the case in the University's Annual Security Report. In some instances, the responding party can be spoken to without the reporting party being identified and without filing or moving forward with a formal report. In these instances the privacy and confidentiality of the individual raising a concern will be protected to the extent possible. In other cases, issues of confidentiality must be balanced against the University's need to investigate and to take appropriate action.

M. Attorneys: Although not necessary, the Reporting and Responding Parties have the right to seek the assistance of a private attorney, at their own expense, regarding a formal report. An attorney for a party may inquire with the Title IX Coordinator regarding the pending report.

N. Criminal Conduct: When a formal report involves allegations which may also constitute criminal conduct, participants are advised to seek legal counsel before making any written or oral statements. This Title IX and Gender-Based Discrimination Adjudication Process does not attempt to create a courtroom environment and attorneys for students are not permitted to actively participate in the process. However, participants should seek legal advice about how this disciplinary process could impact any criminal case in which they are or may become involved.

The University will conduct its own investigation and adjudication of a formal report, regardless of whether the alleged misconduct is also being pursued through the criminal justice system. The University will attempt to comply with law enforcement requests for cooperation. At times, that cooperation may require the University to temporarily suspend its independent investigation while law enforcement gathers evidence. The University will promptly resume its independent investigation as soon as it is notified that doing so would not impede any law enforcement activities.

O. Admissibility of evidence: The Independent Investigation process is intended to arrive at the truth of the matter, without the formalities associated with rules and procedures specifically designed by lawmakers to manage courtroom litigation. Students can address issues and present documents to the investigator without concerns about admissibility. It should be noted that if the Investigator determines that the issues raised and/or documents presented are relevant and probative of whether the alleged

conduct occurred, then, in the interest of fairness, that information will be disclosed to the opposing party.

1. Sexual History: In a case of sexual misconduct, the past sexual history of the Reporting and/or the Responding party or either party's sexual history with others will NOT be used in determining whether the alleged misconduct occurred. Prior consensual sexual activity between the two parties will not be determinative of the issue of consent in the pending formal report. Consent to one sexual act does not constitute consent for another sexual act.

2. Medical and Counseling Records: The use of medical and/or counseling records in the Adjudication Process is rare. Medical and counseling records are privileged and confidential documents that students will never be required to disclose in this Process. "Privileged" means that these documents cannot be shared with anyone other than the treating professional unless the patient agrees to disclosure. Students should be aware that there are legal implications to agreeing to produce privileged records. Students are encouraged to seek advice from a knowledgeable source about the possible consequences of releasing this information. A Reporting/Responding party who, after due consideration, believes that their own medical or counseling records would be helpful in determining whether sexual misconduct occurred, has several options for voluntarily presenting this information:

a. The Reporting party can voluntarily decide to present their own medical or counseling records to the Independent Investigator as part of the documents which they would like to have the investigator consider in conducting their investigation. Please note that if a party decides to produce such records, they must be produced in their entirety. The production of excerpts or selected documents is inappropriate and will not be considered.

b. On occasion, the Investigator may ask the Reporting party to voluntarily agree to provide these records if the Investigator believes that such documentation exists and that it would be helpful in conducting their investigation. A party is under **no obligation** to provide this information and may simply say "no" to this request. A party has a right to refuse to provide these records and that refusal is completely acceptable.

Prior to responding to such a request, a party is encouraged to consult with their support person about the implications of agreeing or denying the request. Please note that if a party does decide to produce such records, they must be produced in their entirety. The production of excerpts or selected documents is inappropriate and will not be considered.

c. The Investigator may ask a Reporting or Responding party to voluntarily provide a verification of therapeutic or medical services to confirm simply that such treatment occurred, but not providing any details regarding that treatment. On rare occasions, a person may be in possession of the medical and/or counseling records of another party or witness. Such records can only be presented to the Investigator under the following circumstances: (i) the person can show that the records are relevant to the pending formal report; (ii) the person can document or otherwise prove that the records were legally obtained; and (iii) the records can be authenticated. Failure to meet any of

these conditions means that the records will not be considered in the determination regarding the alleged misconduct.

P. Parental Notification: Since the University views students as adults, parents and guardians will not be notified when a formal report is filed under the Title IX and Gender-Based Discrimination Policy. Students are encouraged to inform their parent(s) or guardian(s) if they are involved in a disciplinary action and should refer them to the Title IX Coordinator if they have questions. If, at the conclusion of the adjudication, a student is separated from the University or University Housing, the University generally will attempt to inform that student's parent(s) or guardian(s) at the time such discipline is imposed.

Q. Title IX Inquiries and Investigations: Under state and federal law, including Title IX, sexual misconduct (which includes sexual harassment, sex/gender discrimination, sexual exploitation, rape, sexual assault, relationship violence or stalking) is prohibited. Definitions of this conduct and options for addressing this conduct are included in the Title IX and Gender-Based Discrimination policy. Pursuant to its obligations under the law, including Title IX, the University will make an inquiry into all allegations of sexual misconduct of which it becomes aware, regardless of whether a formal report has been filed. The independent investigator act as the neutral fact-finding body responsible for making inquiries into allegations of conduct that may violate Title IX. As such, it is possible that the parties may have been interviewed by an independent investigator prior to a formal report having been filed. An independent investigator who has been vetted by the University will be retained for all cases of sex/gender-based harassment and/or discrimination brought under this Adjudication Process. Upon the initiation of an independent investigation by the Title IX Coordinator under this process, the independent investigator will review any information previously obtained through an inquiry (if made), in light of the information provided through the statements of the parties regarding the report. The independent investigator will then conduct any additional investigation that is necessary to address the allegations of the report. The investigator will include all relevant findings from the investigation in the investigation report submitted to the Title IX Panel. Investigations will only be conducted by investigators who have been specially trained to address issues of sexual misconduct and who are otherwise knowledgeable about investigating and analyzing Title IX reports.

R. Title IX Panel Conference: Under Title IX and Gender-Based Discrimination Adjudication Process, the final decision regarding the report will be made by a Panel of three trained individuals. This Panel will consist of **three administrators from within the University**. These panelists will be chosen from a pool of administrators, all of whom are specially trained in the adjudication of sexual misconduct/gender-based discrimination. The panelists from this pool are by the Title IX Coordinator. Either party has the right to raise any concerns they may have regarding a possible conflict of interest with any of the Panel members who have been assigned to the matter. Involved parties must inform the Title IX Coordinator of any potential conflicts within 72 hours of the panel conference. In the event that one of the members has a conflict of interest, they may recuse themselves from the panel. The Title IX Coordinator will then chose another trained panel member to sit in the place of the original panelist. The Title IX Coordinator will select a Title IX panel chair. Decisions regarding the composition of the panel are made at the sole discretion of the Title IX Coordinator. An effort will be made to have the panel be reflective of the demographics/identities of the parties, if known.

### III. THE ADJUDICATION PROCESS

This is the adjudication process under which allegations of sexual misconduct will be resolved. Under ordinary circumstances during the academic year, this adjudication process should be completed within 90 business days from the receipt of the formal report. Formal reporting options can be found in section X of the Title IX and Gender-Based Discrimination policy. Students also may have legal remedies available outside of Bentley, including filing charges with the police, filing a civil action and/or filing an administrative action. Bentley University recognizes that the decision about whether to bring a formal report against another student can be complicated and challenging. Nevertheless, students should know that all reports will be taken seriously and will be investigated.

#### **A. Filing a Formal Report**

A person who has experienced an incident of sexual misconduct including sexual harassment, sex/gender discrimination, sexual assault, relationship abuse, stalking, sexual exploitation, and/or any other sexual misconduct committed by a member of the Bentley community may file a report against the individual responsible for that conduct.

Reports should be filed with either:

Erin Kelley  
*Title IX Coordinator*  
Director of Student Conduct and Development  
Student Center 320  
781-891-2329

Alex Hirs  
*Deputy Title IX Coordinator for Student Support*  
Assistant Director of Gender Equity and Development  
Student Center 320  
781-891-2364

The individual bringing the allegation is called the reporting party. The reporting party is welcome to bring a support person with them to any meetings with the Title IX or Deputy Title IX Coordinator.

1. Reporting party's Statement: To file a formal report against a student, the reporting party must submit an initial, written statement detailing the allegations of the misconduct. This statement is the first opportunity for the reporting party to describe the allegations against the responding party.

The Reporting party's Statement should include the name of the accused student, the date and location of the alleged sexual misconduct and the details of the alleged misconduct. This statement should provide details about the facts surrounding the alleged sexual misconduct. The statement must be written by the Reporting party.

2. Confidentiality/ Non-Retaliation Acknowledgment: The reporting party will be required to not disclose or discuss anything relating to the formal report with anyone other than those authorized to see/hear such information under this process. The reporting party will still be able to discuss the facts underlying the subject of the formal report with counselors, clergy, other therapeutic professionals and family. The reporting party should refrain from discussing the

formal report itself and/or the adjudication process with anyone affiliated with Bentley. This is to preserve the integrity of the investigative process and also to prevent allegations of retaliation. Through this acknowledgment, the reporting party also agrees to refrain from any retaliatory conduct against the responding party or any witnesses in the matter, as discussed under Section II, Paragraph I., and may be responsible for any retaliation by persons affiliated with the reporting party (i.e., a friend or family member).

## **B. Responding to a Formal Report**

The person against whom the formal report is brought is called the responding party. The responding party shall be given written notification when a formal report has been filed against them.

1. Initial Meeting: Notice that a formal report has been filed against a responding party will be provided to that student in person. The responding party is welcome to bring a support person by either the Title IX Coordinator or Deputy Title IX Coordinator. At this meeting, the Title IX or Deputy Title IX Coordinator will discuss the nature of the report, explain the rights and responsibilities of the responding party, explain the prohibition against retaliation, review the investigation and adjudication Process and give the responding party a copy of the relevant policies.

2. Confidentiality/Non-Retaliation Acknowledgment: The Responding party is required to adhere to the Confidentiality/Non-Retaliation Acknowledgment, agreeing not to disclose or discuss anything relating to the formal report with anyone other than those authorized to see/hear such information under this process. Through this acknowledgment, the responding party also agrees to refrain from any retaliatory conduct against the reporting party or any witnesses in the matter, as discussed under Section II, Paragraph I., and may be responsible for any retaliation by persons affiliated with the responding party (i.e. a friend or family member). Refusal/failure by the responding party to meet and cooperate with the Title IX or Deputy Title IX Coordinator or Independent Investigator regarding this matter or to abide by the Confidentiality/Non-Retaliation Acknowledgment, as determined by the Title IX Coordinator, may result in either (1) a suspension of the responding party from the University and/or (2) the adjudication of the formal report without input from the responding party.

3. Responding Party's Statement: The responding party may choose to provide a written response to the formal report. The responding party's Statement will be submitted to the independent investigator and serves as an opportunity to respond to the allegations made by the reporting party. This statement should provide as much detail as possible about the facts surrounding the alleged sexual misconduct and must be written by the responding party.

## **C. Independent Investigation**

After both parties have submitted their statements, Title IX Coordinator will initiate an Investigation, utilizing neutral, external investigators retained by Bentley. These investigators have been vetted by the University, are determined to be free from bias, and well-trained in conducting Title IX investigations.

It is the responsibility of the investigator, not the parties, to gather the evidence relevant to the formal report and the facts raised in the parties' statement, to the extent reasonably possible. During the course of the investigation, the investigator may utilize some or all of the following procedures, in

whatever order the Investigator deems most appropriate. The scope of the independent investigation will not be limited to information provided by the parties or to the violations outlined in the formal report. In all cases, the investigator will conduct an adequate, reliable, and impartial investigation into the allegations of the report, reviewing all evidence deemed to be relevant. Parties and Witnesses should make themselves reasonably available to the Investigator. The Bentley Beliefs compel all students to act with integrity and honesty in their academic, personal, and professional lives. Students who refuse to cooperate with the Investigator in the independent investigation, as determined by the Title IX Coordinator, are in opposition of this core belief and may face disciplinary action for their refusal to cooperate.

1. Document Review: The investigator will review the statements and all of the supporting material referenced. The investigator will then attempt to obtain any documents or other materials deemed relevant to the investigation. Any documents or information deemed to be material to the findings regarding the formal report, or any other violations will be disclosed to both parties for comment or rebuttal.

2. Party Interviews: The investigator will interview the reporting party and the responding party separately. This meeting is an opportunity for the participant to discuss their recollection of the event in question, supplement any written statements already submitted, voice any concerns, and to work with the Investigator to determine what information may helpful in the investigation of the allegations. Parties may also discuss the impact that this experience has had on them. The investigator may interview the parties more than once, as necessary.

The reporting party's or responding party's support person may accompany them to all the meetings with the Investigator but may not participate in the conversation. Prior to sitting in on any interviews, the support person will be required to agree to a confidentiality/non-retaliation Acknowledgment, agreeing not to disclose or discuss anything relating to the formal report with anyone other than those authorized to see or hear such information under this process. At the conclusion of the interview, participants are permitted to make an optional closing statement.

A description of all sources of information (e.g., witnesses, correspondence, records, etc.) should be provided to the investigator. This should include information which the party believes should be considered in deciding disciplinary action, along with a brief explanation of why this information would be relevant and helpful to the process. Please identify the sources and/or location of this supporting information but do not attempt to obtain this information yourself. The independent investigator will solicit any relevant statements or documents referenced through this process.

3. Witness Interviews: The investigator will attempt to interview any witnesses identified by the parties that the investigator deems to be relevant to the resolution of the formal report. The investigator may also interview any other persons which they find to be potentially relevant to this matter. Witnesses may request from the Title IX or Deputy Title IX Coordinator a University Support person to be present with them during their interview. Prior to being interviewed, a witness will be required to agree to a confidentiality/non-retaliation acknowledgement, agreeing not to disclose or discuss anything relating to the formal report and their interview with anyone. Through this acknowledgment, the witness will also agree to refrain from any retaliatory conduct against the parties or any witnesses in the matter, as

discussed under Section II, Paragraph I., and may be responsible for any retaliation by persons affiliated with them (i.e., a friend or family member). The investigator will employ best efforts to interview relevant witnesses who are no longer on campus or in the Boston area, attempting to contact them by phone or internet.

4. Expert Witnesses: The investigator reserves the right to consult with any experts which they deem necessary to the determination of the facts of this case. An expert witness could be consulted to review or provide a professional opinion regarding evidence discovered in the independent investigation.

#### **D. Investigation Report**

Once the independent investigation has been completed, the investigator will evaluate the information obtained during this process. The investigator will prepare a report summarizing and analyzing the relevant facts received through the investigation, noting any supporting documentation or statements. The investigator may draw conclusions and make recommendations regarding the credibility of all testimony and the reliability of documentation. The investigator will present the investigation report to the Title IX Panel. Under ordinary circumstances, the investigation report should be submitted to the Title IX within 15 days after the completion of the independent investigation. Both the reporting and responding parties will be allowed to review the investigation report prior to the Title IX Panel's Conference. Students and their support person will be allowed to view the investigation report in the presence of the Title IX staff or their designee.

#### **E. Rebuttal Documentation**

After reviewing the investigation report, the parties have the opportunity to provide any rebuttal statements, documents, or other new information regarding the sources of potentially relevant information and/or witnesses in writing to the Title IX Coordinator within 72 hours of the Title IX Panel Conference. Any information that is submitted will be made available to the other party for review and will be provided to the Title IX panel.

#### **F. Final Statements to the Title IX Panel**

Reporting and responding parties will be provided the opportunity to provide separate final statements at the Title IX Panel Conference (which will typically take place within 15 days of receiving the investigation report). At this time, each party will have an opportunity to comment on and respond to the information presented in the investigation report.

#### **F. Supplemental Investigation Procedures**

After meeting with the parties and reviewing any additional information submitted for consideration, the panel may determine that additional inquiry is needed in order for a decision to be rendered regarding the formal report. If so, the Title IX panel chair will ask that the investigator conduct a supplemental investigation regarding the areas of concern. The investigator will focus any additional investigation on the specific inquiries made by the Title IX panel. The investigator will then prepare and submit a supplemental investigation report addressing the findings as to the issues raised by the Title IX panel. Under ordinary circumstances, any additional investigation and supplemental investigation report should be completed and submitted to the Panel within 30 days of the request for the

supplemental investigation. The Title IX panel chair reserves the right to schedule a subsequent Title IX panel conference to address the findings from the supplemental investigation with the parties separately, at its discretion, should the Panel feel that such a meeting would be helpful to the process.

#### **G. Withdrawal/Acceptance of Charges**

1. Reporting party May Withdraw the Report: Prior to the Title IX panel's Decision, the reporting party may withdraw the formal report. Withdrawal of the report will, under most circumstances, end the adjudication Process for that report. Once a report has been withdrawn, it cannot be filed again by the reporting party within this Process. The University reserves the right to move forward with the formal report, even after the reporting party decides to withdraw it, in order to protect the interests and safety of the Bentley community.

2. Responding party May Accept Responsibility: Prior to the Title IX panel's decision, the responding party may accept responsibility for the misconduct alleged in the formal report. This acceptance, under most circumstances, will end the adjudication process and the matter would then be referred to the Title IX panel to decide the issue of the appropriate disciplinary action for the responding party. The Panel may take the responding party's acceptance of responsibility into consideration in determining the appropriate sanction. Once the responding party accepts responsibility, such acceptance cannot be withdrawn. A written finding of the accepted report and the resulting disciplinary action will be issued by the panel, which will become part of the Responding party's student records and will be shared with the reporting party.

3. Responding party May Withdraw: At any time up until three (3) days after the Title IX Panel Conference, the responding party has the right to withdraw as a student from Bentley University. In such a case, the responding party will leave the University with the notation "Student Withdrew with Disciplinary Charges Pending" on their disciplinary record. After withdrawing, the responding party will not be eligible to return to the University. A responding party's withdrawal will end the Adjudication Process for that report. On the fourth (4th) day after the Title IX Panel Conference, the responding party will no longer be allowed to withdraw, as the pending decision from the panel and disciplinary action will determine their status with the University. Under certain circumstances, and at the discretion of the panel, the time period for the responding party to withdraw may be extended if a supplemental fact-finding investigation has been requested by the panel. In that case, the responding party's right to withdraw would expire three (3) days after any subsequent Title IX Panel Conference is held, or after notice that a subsequent Title IX Panel Conference will not be scheduled.

#### **H. Panel's Decision**

Upon determining that all of the issues regarding the formal report have been fully investigated and adequately addressed, the Title IX panel will issue its decision. The decision will be made on the preponderance of the evidence standard – that is whether the facts presented in the investigation report support a finding that it is *more likely than not* that University policy has been violated. The decision of the panel will be reached by a majority. The Title IX panel will base its decision on the information presented in the investigation report and any supplemental investigation report. Under ordinary circumstances, the Title IX panel's decision will be issued in writing within 10-14 business days

after the Title IX Panel Conference. The panel chair will draft the panel's written decision and submit it to the Title IX Coordinator.

The Panel may issue the following decisions to a formal report:

- A finding that a University policy was violated. The panel will then impose the appropriate disciplinary action.
- A finding that a University policy was not violated as there is insufficient information to substantiate the allegations of the formal report.

Once the panel's decision has been issued, both the reporting party and the responding party will be notified by the Title IX staff. Each party will meet with the Title IX staff separately to receive a copy of the panel's decision, referencing the supporting information that the panel relied on from the investigation report. The panel's decision is a confidential document that can only be shared with authorized persons as noted in this process (i.e., support persons, attorneys, counselors, or clergy). Anyone disclosing the panel's decision to a person not authorized to see it shall be subject to disciplinary action. If the Title IX panel's decision results in disciplinary action which includes separation from campus, that sanction will be imposed immediately, regardless of whether an appeal has or will be filed. The Title IX Coordinator has the discretion to allow a responding party to complete any pending coursework remotely, if deemed appropriate by the faculty members involved.

### **I. Appellate Process**

Both the reporting party and responding party are entitled to appeal a Title IX panel's decision issued through the adjudication process. The person filing the appeal is the appellant. An appeal must be filed, in writing, within seven (7) business days of their meeting with the Title IX staff.

The appeal will be considered by an impartial and well-trained administrator, or administrators, who were not part of the initial decision-making panel. In considering the appeal, the appellate administrator(s) will be given the appeal, the investigative report including the statements of the reporting party and responding party, and the Title IX panel's decision to review.

To submit an appeal, an appellant should write a letter to the appellate administrator, the Vice President of Student Affairs or their designee, outlining their reason for appeal. The opposing party will be notified if an appeal has been filed. In some situations, both parties may file an appeal. In this situation, the appellate administrator will consider and review both appeals together.

The appeal letter should be submitted via e-mail to:

J. Andrew Shepardson, Ph.D.  
Vice President of Student Affairs/Dean of Students  
Bentley University  
[ashepardson@bentley.edu](mailto:ashepardson@bentley.edu)

There are only three grounds on which a Panel's Decision can be appealed:

1. Procedural Error: The appellant alleges that there was a deviation or change from the procedures outlined in the University's policy which adversely impacted the outcome of the matter.

2. **New Evidence:** The appellant alleges that, subsequent to the issuing of the Title IX panel's decision, new evidence became available which would have impacted the outcome of the formal report. The appellant must: (i) present the new evidence; (ii) show why it was unavailable prior to the Title IX Panel's Decision; and (iii) show that the new evidence could have altered the outcome of the report. The opposing party will be given an opportunity to rebut these assertions by the appellant. If the appellate officer(s) determines that there is evidence that meets these requirements, it will remand the matter to the Title IX Panel for investigation and review in light of the new evidence.

3. **Severity of The Disciplinary Action:** The appellant alleges that the sanctions imposed are too harsh or impose an undue hardship.

The written appeal must specifically state the grounds under which the appeal has been filed and must be submitted within the seven day time limit after their meeting with the Title IX staff. The appeal must set forth the information/evidence to support the appeal. Appeals which do not comply with these requirements may not be considered. The appeal is not an opportunity to argue that the initial decision was wrong. The appeal is not a new fact-finding process. Once the appellate process has been complete, the final decision will be provided to both parties.

#### **J. Conclusion of the Case**

1. The Title IX Coordinator will maintain investigative files for purposes of Title IX compliance. Any and all documents retained at the conclusion of a formal or informal resolution of a report will be maintained by the University in a safe and confidential manner.

2. **Internal Reporting:** Once a final resolution has been reached, whether through a Title IX panel decision or by acceptance of responsibility, that disciplinary decision, if it includes a suspension or expulsion, will become a permanent part of the responding party's student records. As such, the outcome of this disciplinary adjudication may be available to other administrators within the University for their review, if needed.